

RULE 100A. FORM OF ACTION

An action under these Family Division Rules shall be known as a Family Division action, docketed as a Family Matter (FM).

Advisory Notes June 2008

Rule 100A follows Rule 2 but provides that an action under this rule shall be known as a “Family Division action” rather than a “civil action.” The docketing designations of Family Division cases will not change from present practice.

RULE 101. COMMENCEMENT OF ACTION

(a) Filing. Except as otherwise provided by these rules, or by statute, a Family Division action shall be initiated by filing and service of (1) a complaint, (2) a petition, or (3) a motion for post-judgment relief. Accompanying any complaint, petition, or motion for post-judgment relief shall be a summons or other notice to the party served indicating the time within which any response to the complaint, petition or motion must be filed, the location and address of the court where the response must be filed, an indication of what actions, if any, the court may take if there is no timely response to the complaint, petition or motion and an indication of the time and place of any court hearings that may have been scheduled. The time for filing the complaint, petition or motion and filing any return of service with the court shall be as specified in Rule 3.

(b) Complaint, Petition or Motion Form. In a Family Division action under this chapter, when a court-approved form is available, the party initiating the action shall use the court form or incorporate in his or her pleading all of the information requested on the court form. The party initiating the action shall sign the complaint, petition or motion and file it with a Family Division court-approved summary sheet and a child support affidavit if required by Rule 108. A complaint, petition or motion containing the child custody information required by 19-A M.R.S. §1753 shall be signed under oath. The complaint, petition or motion shall state the

residence of the responding party or shall state that the residence of the responding party is not known and cannot be ascertained by reasonable diligence.

(c) Minor as a Party. Notwithstanding the provisions of Rule 17(b), a minor party to any action under this chapter need not be represented by next friend, guardian ad litem, or other fiduciary, unless the court so orders. Nothing in this rule shall be construed to change the current and limited matters in which a minor may be a party to the action.

Advisory Notes June 2008

Rule 101 is based on Rule 3 with the change that a Family Division action may be initiated by filing (i) a complaint; (ii) a petition; or (iii) a motion for post-judgment relief. Because of the wide variety of potential Family Division actions and court hearing or return dates, the second sentence of subdivision (a) notes that accompanying any particular complaint, petition, or motion for post-judgment relief must be a notice to the parties served indicating the specific time within which any response to the complaint, petition or motion must be filed and the court where that response must be filed. For example, some actions may be subject to a fairly prompt court hearing. Others await an answer within a specific time, usually 20 days, before beginning processing. Absent some specific statutory or rule based timing or filing requirement, the deadlines for filing the complaint, petition or motion and filing any return of service would be as specified in Rule 3.

Forms will need to be developed to provide the appropriate notice for each type of action, so that the response time and means of response can be indicated when the complaint, petition or motion is served. Present court forms will have to be reviewed to assure compliance with the overall requirements of these rules.

Subdivision (b) tracks Rule 80(b) but with some reordering of sentences and an updated reference to the Uniform Child Custody Jurisdiction and Enforcement Act. A sentence is added noting that a summary sheet must be filed with each initiating action. The filed documents must comply with the information disclosure requirements in 19-A M.R.S. § 1753(1)-(4).

Subdivision (c) tracks the first sentence of Rule 80(e). A minor party involved in an action under this chapter need not be represented by a next friend, guardian ad litem, or other fiduciary, unless ordered by the court. The second sentence of subdivision (c) is new, to emphasize that the reference to a minor being a party to an action is not intended to change the current and limited matters in which a minor may be a party. Other issues in Rule 80(e) relating to appointment and compensation of a guardian ad litem are addressed in Rule 107 that more generally addresses court actions available in preliminary proceedings.

RULE 102. CONFIDENTIALITY

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or minor child would be jeopardized by disclosure of identifying information appearing in any document filed with the court, the clerk shall seal the identifying information and shall not disclose the information to any other party or to the general public. Disclosure may be ordered only after a hearing in which the court takes into consideration the health, safety, and liberty of the party or minor child and determines that the disclosure is in the interest of justice. The court is authorized to enter any orders in furtherance of the purposes of this section.

Advisory Notes June 2008

Rule 102 is based on 4 M.R.S. §§ 8-A & 8-B and 19-A M.R.S. §1753(5) and follows FAM DIV III.K. It appears in the beginning of this chapter, as the possibility of confidentiality is an important qualification to be understood early in case processing. If identifying information is sealed, the clerk's office must serve the party who sought confidentiality with all the filings made by the other party. In drafting this rule, the committee initially considered adding a requirement that the party seeking confidentiality, if not represented by counsel, provide an alternate mailing address for use by the court and by the other party unless otherwise ordered by the court. This was intended to avoid adding workload to clerks' offices. The Family Division staff recommended that this requirement not be added, as it anticipates that clerks' offices can handle any necessary forwarding without great difficulty.

RULE 103. PROCESS

All actions commenced by filing a complaint, petition or a motion for post-judgment relief with accompanying documents as required by this chapter shall be personally served upon the other party or parties in accordance with Rule 4, except as may be provided in these rules or by statute. In all actions under this chapter, including motions for post-judgment relief, service may be made by registered or certified mail, with restricted delivery and return receipt requested as permitted under Rule 4(f)(2). This form of service may be made in or outside of the state, provided that the party being served is subject to the court's jurisdiction.

Advisory Notes June 2008

Rule 103 states that all actions to be commenced by filing a complaint, petition or motion for post-judgment relief must be personally served on the other party or parties except as may be provided in these rules or by statute. In addition, the rule permits the service of a complaint or petition and summons by registered or certified mail with restricted delivery and return receipt as currently provided in Rule 4(f)(2). The process outlined in this rule continues current practice in Family Division actions that requires that a complaint, a petition and a motion for post-judgment relief be personally served to commence an action. This is one important difference between Family Division actions and other civil actions. In other civil actions, motions for post-judgment relief generally need not be personally served but are served in the same manner as other civil motions. Because a motion for post-judgment relief in a Family Division action is a motion to essentially reopen a judgment, and may be filed many years after entry of the original judgment, personal service is required to assure proper notification and attention of the other party. Service is governed by Rule 4.

RULE 104. PRELIMINARY INJUNCTION

(a) Preliminary Injunction. In all actions for (i) divorce; (ii) judicial separation; or (iii) spousal or child support following a divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the

court, upon commencement of the action, shall issue a preliminary injunction on a form including requirements specified by statute.

(1) The preliminary injunction shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and, if the plaintiff is represented, state the name and address of the plaintiff's attorney. The plaintiff shall obtain the preliminary injunction form from the clerk and complete it before filing.

(2) The plaintiff shall serve the preliminary injunction, along with the summons and complaint or motion, upon the defendant in accordance with Rule 4 and Rule 103. The preliminary injunction is effective against the plaintiff upon the commencement of the action. It is effective against the defendant upon service of a copy of both the complaint or motion and the preliminary injunction order. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint or motion to be served.

(3) The preliminary injunction remains in effect until entry of a final judgment, until the action is dismissed or until the preliminary injunction is revoked or modified by the court. It is enforceable by all remedies made available by law, including contempt of court.

(b) Revocation or Modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification. A motion for revocation or modification of the preliminary injunction does not require a mediation before a hearing is held. On 7 days notice to the other party or on shorter notice as the court may order, the court shall proceed to hear and determine the motion as expeditiously as justice requires.

(c) Post-Judgment Proceedings. The injunction authorized in this section does not apply to post-judgment actions except as provided in subdivision (a)(iii) above.

Advisory Notes June 2008

Rule 104 governs statutory preliminary injunctions. Once an action for divorce, judicial separation, or separate support is initiated, 19-A M.R.S.

§ 852 and 19-A M.R.S. § 903 require that a preliminary injunction issue and specify the terms of the preliminary injunction order. The preliminary injunction procedure applies to original actions identified in the rule. It does not apply to actions initiated by a post-judgment motion, except for a narrow category of post-judgment motions for support where a divorce court lacked jurisdiction over an absent spouse. The purpose of the preliminary injunction is to protect property of either or both parties from dissipation and subject the property to control of the court during the divorce or other adjudicative process. The form and language of a preliminary injunction should track the statutes upon which the preliminary injunction is based. The rule also clarifies that mediation is not required prior to a hearing on a modification or a revocation of a preliminary injunction.

RULE 105. ANSWER; RESPONSE; COUNTERCLAIM

(a) Answer and Appearance. Except as provided for motions to modify support filed pursuant to 19-A M.R.S. § 2009, a party served with a complaint, petition or post-judgment motion shall file an appearance and answer within 20 days after service unless the court directs otherwise. Responses to motions to modify support shall be filed within 30 days after service, unless the court directs otherwise. Any party served with a counterclaim or a cross-claim shall serve an answer within 20 days after service on that party. The time for answer by persons served outside the Continental United States or Canada shall be governed by Rule 12(a). When the court schedules a hearing on any matter before the 20 day time for filing an appearance and answer, the appearance and answer shall be filed before the time set for hearing if the hearing notice was served with the complaint, petition or motion.

If parental rights and responsibilities of a minor child or children is a subject of the action, the person responding shall file under oath the child-related information required by 19-A M.R.S. § 1753. No answer is required in an emancipation action or in a grandparents visitation action pursuant to 19-A M.R.S. § 1803.

A party who does not file an answer or response may enter an appearance before commencement of a hearing and be heard on issues of paternity or parentage, parental rights and responsibilities for children, child

support, spousal support, counsel fees, and distribution of marital or nonmarital property.

(b) Counterclaims and Cross-claims. A grandparent visitation or emancipation action may not be asserted as a counterclaim or cross-claim and no counterclaim or cross-claim may be asserted in those actions. Any other Family Division action that could be brought pursuant to this chapter, including an action allowable by Rule 111, can be asserted as a counterclaim and cross-claim. Except for an action that could be filed as a Family Division action pursuant to this chapter, no counterclaim shall be permitted in any action pursuant to this chapter. Failure to file a counterclaim permitted by this rule shall not bar a subsequent action based on such a claim.

Advisory Notes June 2008

Rules 105 and 106 incorporate significant portions Rule 12, with adjustments for Family Division actions. Placement of the answer and counterclaim requirement at this point in the rule, immediately following the service requirements and preceding the motion requirements, appears more logical for progression of the Family Division actions.

Rule 105, while based upon Rule 12(a), does not incorporate that rule by reference, but rather explicitly states the 20-day responsive pleading requirements to assure that parties responding to Family Division actions are fully informed of the deadlines for response. 19-A M.R.S. § 2009 provides an exception to the 20-day rule. In child support actions, section 2009 requires the response to be filed within 30 days.

The provisions for responsive pleadings by individuals outside of the Continental United States and Canada are incorporated by reference from Rule 12(a).

The rule modifies Rule 12(a) practice for those instances where the court may schedule a hearing on a particular matter before the 20 day response time normally accorded for answer after service of a complaint or post-judgment motion. In such cases, the response must be filed prior to the time set for hearing, if the notice of hearing was served with the complaint or post-judgment motion. This rule makes the time for filing the response to

post-judgment motions the same as the response time for original actions. This rule does require a notice of response to post-judgment motions. However, Rule 105(a) specifies that a party who does not file an answer or response may still be heard on most issues, upon entering an appearance before commencement of a hearing. *See also* Rule 117 addressing Default.

Rule 105(b) contains the restriction on counterclaims in certain Family Division actions, consistent with the restriction on counterclaims in Rule 80(b). Because grandparent visitation actions and emancipation actions are Family Division actions, this rule clarifies that grandparent visitation and emancipation actions cannot be brought as counterclaims or cross-claims, and other Family Division actions cannot be asserted as counterclaims or cross-claims to such actions. Any other Family Division action may be brought as a counterclaim or cross-claim. Actions authorized to be joined pursuant to Rule 111 may be asserted as a counterclaim or cross-claim.